

REMARKS

Amendments to the claims have been made to respond to the issues and concerns raised in the Office Action, to clarify aspects in the specification and claims, and to refine claim language. The amendments are believed to be consistent with the disclosure originally filed. The amendments also have been particularly presented to avoid, where applicable, any admission or estoppel, generally, negatively affecting the scope of protection provided by the disclosure and claims of the present application, and also in a manner that avoids prosecution history estoppel, limitation of the scope of equivalences, or the like. Any amendment should not be construed as an admission regarding the propriety of any objection or rejection raised in any Office Action, and the Applicant reserves the right to pursue the full scope of the unamended claims in any subsequent patent application as may be appropriate. Claims 28, 30-40, 45-46, and 49-50 have been amended. Claims 1-27, 29, 41-44, and 47-48 have been cancelled. Claims 28, 30-40, 45-46, and 49-50 remain in the application. Each amendment is believed to have been made in accordance with Rule 121. However, should any unintended informality exist, it is requested that the undersigned be contacted by telephone so that it may be resolved as expediently as possible. It is believed the amendments fully respond to the issues raised in the Office Action. Further detail with respect to specific points raised in the Office Action is offered below.

Included with this response is an Information Disclosure Statement. While the Information Disclosure Statement may increase the burden associated with examining this Application, it is believed to be the only way in which Applicant may comply with its duties under 37 C.F.R. § 1.56.

As a preliminary matter, the Applicant notes that many of the issues and concerns related to the present case present complex and intertwining considerations. Accordingly, in the event questions remain, the Applicant requests the opportunity to pursue an interview to resolve any issues or concerns.

The Office has raised certain new matter concerns with respect to steps c), d) and e) of claim 28. The Applicant disagrees with the new matter concerns raised and specifically believes that the subject matter of steps c), d), and e) are disclosed in the Application as filed. However, in order to expedite examination of the Application, the Applicant has cancelled steps c), d), and e) of claim 28. These amendments are believed to fully address the new matter concerns raised by the Office.

The Office has raised priority concerns with respect to the filing dates of certain provisional applications to which the current Application claims priority. The Applicant disagrees with the priority concerns raised and specifically believes the subject matter of the current claims are fully supported by these provisional applications. However, the Applicant notes the Office's priority concerns appear to be based on steps c), d), and e) of claim 28. Accordingly, the Applicant's cancellation of steps c), d), and e) of claim 28 as described above is believed to fully address the priority concerns raised by the Office, and the Applicant therefore is entitled to the priority of these provisional applications for the subject matter of the claims as amended.

The Office has raised certain obviousness concerns with respect to the Riggs reference. The Applicant disagrees with the obviousness concerns raised. In particular, because Applicant's earliest priority date for the subject matter of the amended claims has been established to the provisional applications as discussed above, the Riggs reference is unavailable for use as prior art by the Office in making an obviousness rejection. In making an obviousness rejection, the scope and content of the prior art first must be determined. *See e.g.* MPEP 2141. Before answering the content inquiry, it must be known whether a patent or publication is in the prior art under 35 U.S.C. § 102. *See e.g.* MPEP § 2141.01. Here, the Riggs reference does not qualify as prior art under any of the various subsections of 35 U.S.C. § 102, for example because the Riggs reference is not the work of another nor was it available more than one year prior to the Applicant's earliest priority date. Since the Riggs reference does not fit under any of the subsections of 35 U.S.C. § 102, it is unavailable to the Office to support an obviousness rejection under 35 U.S.C. § 103.

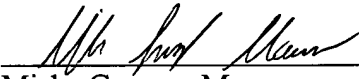
Moreover, please be aware the Applicant has inquired with staff at the library of Colorado State University regarding the catalog date of the Riggs reference. The Applicant has been advised that the catalog date of the Riggs reference was February 20, 2002, that this catalog date represents the earliest possible date at which the Riggs reference could have become available to the public, and that the library would have been the first to catalog the Riggs reference since the thesis was completed to fulfill university degree requirements. Please find attached to this response as Exhibit "A" a copy of fax correspondence from library staff, including a circled catalog date from the library's records for the Riggs reference. Given the foregoing, the Applicant notes that establishing the catalog date of the Riggs reference as February 20, 2002 places its availability as a reference well after the Applicant's filing date of June 12, 2001.

Finally, though no affidavit is provided at this time, the Applicant notes the Riggs reference likely may be removed under the provisions of MPEP 715.01(c).

Having addressed each of the concerns raised in the Office Action, the Applicant respectfully requests reconsideration and withdrawal of the rejections and objections to the application. Allowance of claims 28, 30-40, 45-46, and 49-50 is requested at the Office's earliest convenience.

Dated this 3 day of October, 2006.

Respectfully submitted,
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DATE: Oct. 2, 2006

TO: Misha

FAX#: 970 224-3175

RE: CSU Library record

FROM: Colorado State University Libraries
Beth

FAX#: (970) 491-4611

VOICE PHONE: 970 491-1827

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